not be extended by implication or construction. Where these principles are observed, the decisions are uniform in holding that in order for a third person to recover upon an agreement between others to which he is not privy, the contract must be made expressly for his benefit. *Sterling* v. *Wolf,* 163 Ill. 467; *Searles* v. *Flora,* 225 Ill. 167; *Alpena* v. *Title Guaranty & Surety Co.,* 168 Mich. 350; *Townsend* v. *Cleveland Fireproofing Co.,* 18 Ind. App. 568; *Electric Appliance Co.* v. *U. S. Fidelity & Guaranty Co.,* 110 Wis. 434; *City of Kansas, ex rel Blumb* v. *O'Connell,* 99 Mo. 357; DILLON, MUNICIPAL CORPORATIONS (5 Ed.) § 830. The opposite view is taken in a line of Nebraska cases beginning with *Lyman* v. *Lincoln,* 38 Neb. 794. This decision on facts identical to those in the principal case seems to do violence to the surety's obligation on the bond. The materialmen were not expressly mentioned in the contract or in the bond, but the court said, "Obviously, the City of Lincoln intended this bond to protect from the defaults of the contractor all those who might labor on or furnish materials for its buildings." In *Des Moines Bridge & Iron Works* v. *Marxen & Rokahr,* 87 Neb. 684, the court was impressed with the lack of support for this view but refused to overrule the previous holding on the ground that it was not good policy to disturb that which had been long settled within its jurisdiction. In *Sailling* v. *Morrell,* 97 Neb. 454, the cases were reviewed and the former ruling sustained. The court in *Electric Appliance Co.* v. *U. S. Fidelity & Guaranty Co.,* supra, expressly repudiated the Nebraska view. It would seem that the holding of the court in the principal case is the correct one, being well supported by authority and free from the doubts which surrounds the Nebraska view.

PARENT AND CHILD—LIABILITY OF DRUGGIST FOR SALE OF DRUGS TO CHILD.—The defendant druggist, who knew that the plaintiff's minor son was addicted to the use of drugs, sold large quantities of heroin to said minor son. The use of the same rendered the son worthless and unhealthy, whereby the plaintiff was deprived of his earnings. *Held,* that an action was maintainable. *Tidd* v. *Skinner,* (1916) 156 N. Y. Supp. 885.

This case is novel on its facts but the principles underlying it are well established. A parent is entitled to the earnings and services of a minor child, and any wilful or negligent misconduct of a third person which deprives the parent of the same will form the basis for an action, as where a child is negligently injured by a third person, *Horgan* v. *Pacific Mills,* 158 Mass. 402; or where a daughter is seduced, *Mulvehall* v. *Millward,* 11 N. Y. 343. Likewise a husband is entitled to the services of his wife, and any negligence of a third party violating that right gives a right to an action for damages. *Skoglund* v. *Minneapolis Street Ry. Co.,* 45 Minn, 330; *Town of Newberry* v. *Conn, etc. R. Co.,* 25 Vt. 377. In *Hoard* v. *Peck,* 56 Barb. 202, and *Holleman* v. *Harward,* 119 N. C. 150, 56 Am. St. Rep. 672, recovery by the husband for loss of services of the wife was allowed, the defendant in each case having sold drugs to the wife as in the principal case. It was argued in *Hoard* v. *Peck, supra,* "that the selling of laudanum is a lawful business, and that, therefore, no action will lie * * * and whether lawful, or not, the wife having volun-

tarily used it, the defendant not having assisted her in the act of taking it, therefore he is not liable for the injury caused by the use of it." In *Holleman* v. *Harward, supra,* the contention is answered thus, "And it seems to be the most reasonable proposition of law that whoever wilfully joins with a married woman in doing an act which deprives her husband of her services and her companionship is liable to the husband in damages for his conduct. And the defendant owed to the plaintiff the legal duty not to sell to his wife opium." *Flandermeyer* v. *Cooper,* 85 Oh. St. 327, 40 L. R. A. N. S. 360 permitted a recovery in favor of a wife for sale of drugs to her husband. The reasoning in the cases cited *supra* is clearly sustained by cases involving the alienation of the wife's affections where she is a willing party. *Rhinehart* v. *Bills,* 82 Mo. 534. Also by cases for crim. con. where the adulterous wife consents. *Wilton* v. *Webster,* 7 C. & P. 198; *Chambers* v. *Canefield,* 6 East 244.

PARTITION—OIL LANDS NOT DIVISIBLE IN KIND.—Plaintiff brought an action for the partition in kind of a tract of land supposed to contain oil, but upon which no oil, gas or other minerals had as yet been discovered. *Held,* two judges dissenting, that the property was not of a nature that would admit of partition in kind. *Gulf Refining Co.* v. *Hayne,* (La. 1916) 70 So. 509.

At common law the co-parcener alone had the right to compulsory partition. Joint tenants and tenants in common were given the right to a writ of partition by 31 Hen. VIII, c. 1 and 32 Hen. VIII, c. 32 (1540). 2 BLACKSTONE, COMM. 185, 189, 194. Equity assumed jurisdiction in cases of partition sometime about the reign of Elizabeth. 1 SPENCE, EQUITY, 654. A co-tenant, when his title is clear, is entitled to partition as a matter of right. *Willard* v. *Willard,* 145 U. S. 116; *Martin* v. *Martin,* 170 Ill. 639; *Brevoort* v. *Brevoort,* 70 N. Y. 136; *Crocker* v. *Cotting,* 170 Mass. 68, 70. As a general rule, all property that is capable of being held in co-tenancy is subject to compulsory partition. *Hanson* v. *Willard,* 12 Me. 142. This rule, however, has its exceptions. Partition will not be decreed when it would be contrary to public policy, as in the case of a railroad (*Railroad Co* .v. *Railroad Co.,* 38 Ohio St. 614), or when it would offend the public sense of propriety, as in the case of a church or burial ground (*Brown* v. *Lutheran Church,* 23 Pa. St. 495). Ordinarily there can be no partition of mines. *Mountjoy's Case,* Godb. 17; *Lenfers* v. *Kenke,* 73 Ill. 405; *Adams* v. *Briggs Iron Co.,* 7 Cush. 361, 365; *Wilson* v. *Bogle,* 95 Tenn. 290; *Conant* v. *Smith,* 1 Aiken (Vt.) 67; *Kemble* v. *Kemble,* 44 N. J. Eq. 454. These cases proceed on the theory that the situation is such that a division of the property would necessarily result in inequality. However, partition will be decreed in such cases if it is practicable; as when the lands contain solid minerals and the mines have not been opened (*Hughes* v. *Devlin,* 23 Cal. 502; *Rainey* v. *Frick Coke Co.,* 73 Fed. 389) or when the mineral is so situated that a fair division can be made by dividing the surface of the land (*Dall v. Confidence Mining Co.,* 3 Nev. 485; *Canfield* v. *Ford,* 28 Barb. (N. Y.) 336). The surface can be separated from the underlying minerals and distinct titles made to each. *Ames* v. *Ames,* 160 Ill. 599. See *Byers* v. *Byers,* 183 Pa. St. 509. In the case of oil and gas,